THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.4055 of 1997

Dated 02-02-2007

Between:
Mr.Kathi Daneil.

..... PETITIONER

AND

Union of India, rep. By its Secretary, Ministry of Defence & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.4055 of 1997

O R D E R:

The proceedings of the disciplinary authority dated 21-05-1992 and the order of the appellate authority dated 16-04-1996 are impugned in this writ petition.

The petitioner, a Hawaldar in the Army, applied for leave from 10-02-1989 on receiving intimation from his native place that his presence was essential thereat. The petitioner admits that having spent around 65 days with his family and having adjusted his domestic problems, he had reported at the headquarters on 18-04-1989 seeking posting, that his request was not entertained and that he was informed by order dated 23-04-1991 that necessary orders of dismissal would be passed by the concerned Unit. The petitioner sent a representation on 31-01-1992 to the defence department narrating all the facts and since there was no reply thereto, he filed W.P.No.1974 of 1992. During the course of the hearing of the writ petition, the impugned order of dismissal dated 21-05-1992 was served on the counsel for the petitioner. The petitioner filed WPMP.No.1503 of 1993 seeking amendment of the prayer in W.P.No.1974 of 1992 to include a challenge of the order of dismissal dated 21-05-1992. The writ petition was disposed of by order dated 16-11-1995. This Court while taking note of the contention of the petitioner that the order of dismissal was contrary to the procedure laid down under Rule 17 of the Army Rules and was in violation of the principles of natural justice, held that it was for the appellate authority to consider these contentions, more especially, peruse the records with regards issuance of show cause notice and compliance of other requirements under the Act, that the petitioner was

permitted to prefer an appeal under Section 26 of the Army Act to the Headquarters within six weeks from the date of receipt of a copy of the order and it was left open to him to urge all the grounds, which were raised in the writ petition and such other pleas which he intended to make before the appellate authority, and on receipt of the appeal before the Army Headquarters, the same was directed to be decided within six weeks thereafter. The petitioner preferred an appeal to the Chief of the Army Staff, Army Headquarters, vide proceedings dated 24-11-1995, wherein he raised several contentions alleging violation of principles of natural justice and Rule 17 of the Army Rules. The petitioner requested that the impugned order of dismissal be set aside and he be allowed to rejoin duty on humanitarian grounds. The petitioner's complaint dated 24-11-1995 was rejected by order dated 17-04-1996. The petitioner was informed vide proceedings dated 03-06-1996 that since the statutory complaint dated 24-11-1995 had been disposed of on 16-04-1996 and a decision had been conveyed to the petitioner vide letter dated 19-04-1996, no action could be taken on his subsequent petition dated 25-04-1996.

It is necessary to note that the impugned order dated 16-04-1996 is a cryptic order, wherein it is stated that in exercise of the powers conferred under Section 26 of the Army Act, 1950, the statutory complaint dated 24-11-1995 was examined and that the statutory complaint was rejected as it lacks substance. None of the several contentions raised in the statutory complaint were considered by the appellate authority. The impugned order, is cryptic and is bereft of reasons. While it is no doubt true that where the appellate authority confirms the order of the disciplinary authority, it is not necessary that

the appellate order should be elaborate, it must nevertheless be a reasoned order revealing application of mind by the appellate authority to the several contentions raised in the grounds of appeal. Since the order of the appellate authority is cryptic and is bereft of reasons, it is accordingly quashed. The appellate authority shall reconsider the petitioner's appeal dated 24-11-1995 and pass a reasoned order thereupon within four months from the date of receipt of a copy of the order. It is made clear that the order of the disciplinary authority has not been interfered with and that order shall remain in force pending consideration of the appeal before the appellate authority.

The Writ Petition is accordingly disposed of. No order as to costs.

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02-02-2007

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